Comptroller General
of the United States

Washington, D.C. 20548

Decision

REDACTED DECISION

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Matter of: Litton Systems, Inc., Data Systems Division

File: B-262099

Date: November 17, 1995

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Robert A. Russo, Esq., and Jeffrey I. Kessler, Esq., Department of the Army, for the agency.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of technical proposals is denied where the specific allegations lack factual support and/or amount to no more than a mere disagreement with the results of the evaluation, and there is no basis on which to find the evaluation unreasonable.

2. Protest challenging the agency's conduct of discussions is denied where the record shows that the protester was on notice of the concern at issue and that the agency was not obligated to raise the matter further.

3. Protest challenging the agency's cost realism evaluation of the awardee's proposal is denied where the specific allegations are insufficient to show that the evaluation was unreasonable or arbitrary.

DECISION

Litton Systems, Inc., Data Systems Division, protests the award of a contract to Hughes Aircraft Company, Defense Systems Business Unit, under request for proposals (RFP) No. DAAB07-95-R-H302, issued by the Department of the Army for the development of the Land Warrior System. Litton primarily challenges the Army's technical and cost evaluations.

We deny the protest.

BACKGROUND

The solicitation, issued February 3, 1995, contemplated award of a cost-plus-award-fee contract for the design, development, integration, fabrication, test, and support requirements for the Land Warrior System. This System integrates various components and technologies to enhance the soldier's battlefield capabilities and will be comprised of four subsystems: an individual soldier computer/radio subsystem with global positioning system (GPS) receiver; a protective clothing and individual equipment subsystem; an integrated helmet subsystem; and a modular weapons subsystem. Offerors were required to describe how they would combine these subsystems into an integrated Land Warrior System through the use of nondevelopmental items and the development of new equipment and/or software. In addition, offerors were to integrate certain items of government-furnished equipment that had been developed in conjunction with other Army programs.[1] The RFP's specifications clearly identified both required and desired performance capabilities.

Offerors were advised that award would be made to the offeror with the best overall proposal determined to be the most beneficial to the government, with appropriate consideration given to four evaluation factors--technical, integrated product and process development (IPPD), performance risk, and cost. The technical factor was significantly more important than the other factors combined; the IPPD factor was as important as performance risk and cost combined; and the performance risk and cost factors were equally important. The technical factor included the following subfactors: system design and integration; computer/radio subsystem design, development, and integration; software design, development, and integration; integrated helmet subsystem design, development, and integration; weapon subsystem design, development, and integration; and protective clothing and individual equipment design, development, and integration.[2] The IPPD factor, not at issue here, also included a number of subfactors. Proposals would be rated

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[1]The Land Warrior System acquisition strategy integrates these separate programs with the Land Warrior equipment to form a fully integrated soldier system to be fielded by the turn of the century. A separate effort, the GEN II Soldier Advanced Technology Demonstration--a part of the 21st Century Land Warrior (21 CLW) Top-Level Demonstration--has been initiated to develop less mature technologies to meet longer-term soldier deficiencies. The GEN II contract was awarded in 1994.

[2]System design and integration was significantly more important than the computer/radio, software, and integrated helmet subfactors individually, and these subfactors were equally important and individually equal in importance to the weapon and protective clothing subfactors combined, which are of equal importance.

adjectivally under these factors and subfactors as outstanding, good, acceptable, or unacceptable.

Offers would be given low, moderate, high, or unknown performance risk ratings based on an assessment of the risks associated with the offerors' past performance. The Army would evaluate the realism of each offeror's proposed costs in relation to its specific technical approach to obtain a most probable cost; to the degree that this estimate exceeded the offeror's proposed cost, that cost would be adjusted upward for the purposes of evaluation only.

The Army received two proposals by the March 20 closing date, one from Litton and one from Hughes. The Army conducted a technical and cost evaluation of these proposals, utilizing information from, among other sources, the Defense Contract Audit Agency (DCAA). Following the competitive range determination, the contracting officer conducted three rounds of negotiations with the offerors through the use of written items for negotiation (IFN). Both offerors' proposals were included in the second competitive range, and best and final offers (BAFO) were submitted and evaluated.

Hughes's proposal was rated good under both the technical and IPPD factors, and received an outstanding rating under the software subfactor, good ratings under the system design and integration and weapon subfactors, and acceptable ratings under the remaining technical subfactors. In contrast, Litton's proposal was rated acceptable under both the technical and IPPD factors, and received a good rating under the computer/radio subfactor, and acceptable ratings under the remaining technical subfactors. Both proposals received low performance risk ratings. Hughes's evaluated cost was $50,993,596, and Litton's was $41,090,282.

The source selection authority (SSA) reviewed the reports of the source selection evaluation board (SSEB) and the source selection advisory council and made a detailed written determination that Hughes's proposal was of such significantly superior technical quality that it was worth paying the 24-percent cost premium. In fact, the SSA stated, even if the cost difference had been $2 million greater, Hughes's proposal would still have been selected over Litton's. Award was made to Hughes on July 11, and Litton filed this protest after its debriefing.

Litton challenges the Army's technical evaluation, and contends that the Army improperly failed to conduct meaningful discussions with the firm. Litton also challenges the cost realism analysis of Hughes's proposal.[3]

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[3]Litton also alleges that Hughes received an unfair competitive advantage in this procurement through its performance of the 21 CLW contract, under which Hughes
(continued...)

ANALYSIS

Technical Evaluation

The evaluation of technical proposals is a matter within the discretion of the contracting agency because the agency is responsible for defining its needs and the best method of accommodating them. McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. An offeror's mere disagreement with the agency's judgment does not show that the judgment was unreasonable. McDonnell Douglas Corp., supra.

Litton has raised numerous allegations challenging the Army's evaluation of Hughes's technical proposal. In response to Hughes's request, we summarily dismissed most of these allegations as untimely during the pendency of this protest. Litton's initial protest ground--largely a sweeping challenge to the technical evaluation--was so broad that the Army was unable to respond save for its assertion that its evaluation was properly conducted and its provision of the evaluation documentation. Litton's more detailed allegations were first raised in the firm's comments. We required these later-raised allegations to independently meet our timeliness requirements because any agency response to them would constitute a de facto supplemental agency report, without the corresponding time accommodations allowed for by our regulations. Litton Systems, Inc., Data System Division, B-262099, Oct. 11, 1995, 95-2 CPD ¶ __. Since Litton's allegations were not filed within 10 working days after it knew or should have known of their bases, 4 C.F.R. § 21.2(a)(2) (1995), we dismissed them as untimely.[4]

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[3](...continued)
is a subcontractor. However, a contracting agency is not required to attempt to eliminate a competitive advantage that an offeror might have by virtue of incumbency, see Signal Corp., B-241849 et al., Feb. 26, 1991, 91-1 CPD ¶ 218, and Litton has not shown that any competitive advantage enjoyed by Hughes here as a result of the 21 CLW contract was improperly obtained.

[4]While Litton had been granted an extension of time in which to file its comments, such an extension does not toll our timeliness requirements. See Coulter Corp., et al., B-258713, B-258714, Feb. 13, 1995, 95-1 CPD ¶ 70.

We initially declined to summarily dismiss Litton's allegations concerning Hughes's [DELETED], [DELETED], and [DELETED] because we were not persuaded that these allegations were untimely. However, further review of the entire record makes it clear that Litton had all of the information it needed to raise these allegations when it received the agency report on August 29.[5] Since Litton did not raise these allegations within 10 working days of that date, the allegations are untimely and will not be considered. 4 C.F.R. § 21.2(a)(2); Global Plus, B-257431.9, Dec. 14, 1994, 95-1 CPD ¶ 77.

Litton's remaining allegations are similarly without merit. The protester's substantial pleadings on this matter consist of allegations that both ignore and misinterpret relevant portions of the record. As the following examples demonstrate, the most the protester has shown here is that it disagrees with the Army's evaluation of Hughes's proposal.

Litton argues that Hughes's proposed squad radio will not meet the requirement to provide [DELETED] compatible with the Single Channel Ground and Airborne Radio System (SINCGARS) family of radios [DELETED].[6] The Army issued Hughes multiple IFNs requesting additional information to ensure that its squad radio will comply with this requirement, and Hughes confirmed that its radio could provide [DELETED] to the SINCGARS radio [DELETED] and submitted supporting data. While the Army believed that the radio could meet requirements and therefore that Hughes's proposal was acceptable in this regard, the proposal was assessed as [DELETED] under the computer/radio subsystem subfactor due to the [DELETED] technical risk involved. Litton has not articulated any basis for us to conclude that this aspect of the evaluation was unreasonable.

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[5]The evaluator concerns relied upon by Litton concerning the first two allegations were included in both the initial and interim SSEB reports, and the ratings and proposal contents relied upon by Litton concerning the final allegation were found in the final proposal evaluation briefing, the technical proposals, and the IFN responses. Litton's reliance on later-provided individual evaluator sheets is not determinative where, as here, the information is contained in the decision-level documentation. A firm may not delay filing a protest until it is certain that it is in a position to detail all of the possible separate grounds of its protest. See Blue Cross-Blue Shield of Tennessee, B-210227, May 23, 1983, 83-1 CPD ¶ 555.

[6]The SINCGARS radio is scheduled to evolve, via the System Improvement Plan (SIP), by 1999. Thus, full SINCGARS-SIP compatibility is not required until that time.

Litton also alleges that the Army plans to provide Hughes with the SINCGARS-SIP radio in contravention of the RFP's requirement that the squad radio be contractor-furnished equipment. Litton is mistaken. The Army did not state that it would provide the successful offeror--Hughes--with the radio, but only the necessary drawings and specifications for the radio, the rights to which the Army will acquire under a separate development contract. Contrary to Litton's assertion otherwise, the Army evaluated Hughes's proposal in accordance with this plan, as Hughes's proposal clearly stated that the performance of its radio would comply with the SINCGARS-SIP requirements when they had been defined and made available.[7]

Litton argues that Hughes did not provide for the [DELETED] to allow the [DELETED] to operate, or indicate how the [DELETED] would be accomplished. However, the RFP required offerors' [DELETED] to provide [DELETED] capability in accordance with [DELETED] being developed under the SINCGARS-SIP, which is still in the process of definition and development. Hughes's proposal clearly states that it will implement SINCGARS-SIP once it is defined, and its proposal, inclusive of IFN responses, discusses the [DELETED]. Litton's cursory objection to Hughes's proposal on this basis is insufficient to find the agency's evaluation unreasonable.

Finally, Litton contends that the Army incorrectly credited Hughes with proposing an optional [DELETED] approach that it did not propose. However, as the Army points out, Hughes proposed a [DELETED] which contains several options for [DELETED], as well as several options for [DELETED]. Litton's argument that Hughes merely mentioned an option it did not propose misreads Hughes's proposal. Litton's additional assertion that an evaluator believed Hughes's approach was "high risk" grossly mischaracterizes the record. That evaluator merely commented that one of the [DELETED] options was not proven and needed to be tested. Litton's apparent belief that Hughes's approach was "high risk" amounts to no more than a mere disagreement with the agency's judgment. Id.

Discussions

Litton argues that the Army improperly failed to discuss its concern that Litton's proposed soldier radio/GPS antenna [DELETED].

Contracting agencies are not required to conduct all-encompassing discussions or describe deficiencies in such detail that there could be no doubt as to their identity and nature, but only to reasonably lead offerors into the areas of their proposals

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[7]Since this allegation is without basis, we will not consider Litton's contention, raised in the context of its cost realism challenge, that the Army failed to consider the costs involved in its "plan" to have Hughes deviate from its proposed approach by giving it the radio.

which require amplification or correction. Medland Controls, Inc., B-255204; B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260. The record shows that the Army's actions here were proper.

Litton proposed to [DELETED]. The Army issued Litton an IFN which expressed concern that the [DELETED], and referred to a paragraph in the specifications which states, "[DELETED]."[8]

In response, Litton proposed to [DELETED]. Litton also included the [DELETED], as well as a chart listing the [DELETED] male and female soldiers. This chart clearly indicates that the [DELETED]. In view of the RFP's prohibition of such [DELETED], and the IFN's reference to the above specification, Litton's response shows that the firm recognized the deficiency; the Army was not obligated to raise the matter further. Id.; see also DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95.

Cost Realism Analysis

Litton's challenge to the Army's cost realism analysis of Hughes's proposal consists of its contentions that the Army improperly disregarded DCAA's conclusion that [DELETED] Hughes's [DELETED] significantly understated its costs; failed to consider the significant risk of cost overruns based on problems with Hughes's [DELETED]; and failed to determine whether Hughes proposed realistic costs to meet the technical requirements of the solicitation.[9]

When agencies evaluate proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) § 15.605(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost,

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[8]The "[DELETED]" refers to a segment of the soldier population taken from a data compendium of military [DELETED].

[9]As Litton acknowledges, we previously dismissed as untimely its allegation that the Army improperly failed to consider the impact of its [DELETED]. Likewise, Litton's allegation concerning Hughes's [DELETED], first raised in its September 25 comments, was premised upon information in its possession no later than August 29--the final SSEB report. Since the allegation was raised more than 10 working days after Litton's receipt of the final SSEB report, it is untimely and will not be considered. 4 C.F.R. § 21.2(a)(2).

assuming reasonable economy and efficiency. CACI, Inc.--Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Management Sys., Inc.; Dept. of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp Gen. 1111 (1976), 76-1 CPD ¶ 325.

DCAA's audit report on the initial cost proposal submitted by [DELETED] Hughes's [DELETED] stated that the proposal was [DELETED] because it "significantly understate[d] the amount required to complete the proposed effort." At issue here,[10] DCAA acknowledged that its evaluation of proposed direct labor hours was a technical issue beyond its area of expertise, but stated that it was concerned by the firm's [DELETED] labor estimates [DELETED]. Specifically, the firm stated that its proposal's estimate rationale sheets for labor were based on its [DELETED]. However, since the firm was [DELETED] on the Land Warrior program, the firm [DELETED].

Far from "ignoring" DCAA's opinion, the Army issued Hughes an IFN outlining DCAA's concerns and asking for a response. [DELETED] elaborated upon its earlier statement by explaining its belief that [DELETED] would result in a lower overall cost to the government. Due to the firm's [DELETED] which would strongly affect [DELETED]. In the interim SSEB report, the Army stated that the response set forth a detailed rationale and explained how the effort was not understated.

Thus, the record shows that the Army did consider DCAA's opinion and obtained a response which satisfied its concerns. Litton's view that the response did not add new information to the original proposal is contrary to fact--the response clearly further explained the rationale behind [DELETED] to the Army's satisfaction. Litton's disagreement with the Army's judgment provides us no basis to find that judgment unreasonable, particularly since DCAA itself admitted its lack of expertise to evaluate this matter. An agency cannot blindly rely on DCAA's advice where there is reason to doubt the validity of the information. See General Research Corp., supra.

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[10]Litton's mere reference to another of DCAA's concerns is insufficient to constitute a basis of protest, and the protester's exploration of the matter in its October 26 submission, filed nearly 6 weeks after its receipt of all agency documents generated in this protest, is untimely. 4 C.F.R. § 21.2(a)(2).

Hughes's proposal stated that it [DELETED] estimate. Litton points to a table in Hughes's proposal which lists each subsystem, along with [DELETED] proposed cost for each subsystem. For one subsystem, the [DELETED]. Relying upon this single line from this single table, Litton theorizes that Hughes's proposed costs are not based upon its actual estimated costs of performance, but upon [DELETED] the Army wanted to see. Litton alleges that this tactic will lead to cost overruns.

Litton's argument ignores Hughes's detailed explanation of how it [DELETED] its estimated costs subsystem-by-subsystem. Further, the table as a whole shows that the [DELETED] the other six subsystems, and the proposed costs for these [DELETED]. Litton's selective use of Hughes's proposal does not in any way show that Hughes's [DELETED] would result in cost overruns, particularly given Hughes's extensive explanation of how it arrived at its proposed costs. Moreover, there is no support in the record for Litton's insinuation that Hughes's [DELETED] was otherwise improper.

Litton also argues that the Army improperly failed to determine whether Hughes proposed realistic costs to meet the RFP's technical requirements. Since we previously dismissed as untimely Litton's allegations that Hughes failed to meet the RFP's technical requirements as to the [DELETED], the [DELETED], and the provision of [DELETED], we will not address Litton's arguments, raised in the context of the cost evaluation, that the Army failed to consider the costs of Hughes striving to meet these requirements. Litton's arguments in this regard are premised upon its conclusion that Hughes did not meet these requirements, a conclusion that we did not, and will not, decide on the merits. In the absence of such a decision, Litton's cost arguments are no more than speculative and cannot form a sufficient protest basis.[11] See Mirada Assocs., B-245974, Jan. 30, 1992, 92-1 CPD ¶ 142. In a related matter, Litton's allegations that the Army improperly failed to account for the costs of Hughes meeting the [DELETED] requirements and the [DELETED] requirements are untimely because they were not raised until the firm's October 26 submission, more than 1 month after Litton came into possession of all of the technical and cost documents at issue here. 4 C.F.R. § 21.2(a)(2).

Litton finally argues that Hughes and one of its subcontractors proposed [DELETED] than it accounted for in its cost proposal, and that Hughes's spreadsheet computations contain mistakes. Litton estimates that correction of these alleged errors would result in an upward adjustment in Hughes's cost proposal of between $800,000 and $900,000. We need not address these issues

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[11]In any event, the record shows that Hughes's proposal did meet these technical requirements, and that Litton's arguments to the contrary are premised, as is so much of its protest, upon a misreading of the RFP, Hughes's proposal, and the evaluation documents.

because the SSA specifically stated that the award decision would have been the same even if the cost difference had been increased by $2 million. Thus, even if we were to agree with Litton that Hughes's evaluated cost should have been increased by $900,000, Litton would not have been prejudiced by these errors. Prejudice is an essential element of a viable protest.[12] See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379.

Given our conclusions with respect to the Army's technical and cost evaluations, we need not reach Litton's derivative allegations concerning the cost/technical tradeoff analysis and source selection decision.

The protest is denied.

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[12]For the same reason, we need not address Litton's allegation that one of Hughes's subcontractors proposed [DELETED] hours in the technical proposal which are not accounted for in the cost proposal. Even if this allegation were true, a compensatory cost adjustment would clearly be de minimus.